to keep two cars to maintain his credibility in business circles. I should also add here that the petitioner is also supporting the second wife and another son (born in 1970) who is now studying in the Ngee Ann Polytechnic. The respondent and the daughter have made other allegations which implied that the petitioner has hidden assets somewhere, one such allegation being that the petitioner in 1986 had put the daughter up in a hotel in Mayfair, London at £200 per night. The petitioner's version is that his hotel expenses were paid for by an Indonesian company with which he had some business dealings in the past and that he only paid £90 for the daughter's room. He said he had to do it to maintain his business credibility with his business acquaintances.

In my view, the petitioner has produced more than sufficient evidence to show that there has been a material adverse change in his financial circumstances at the date of his petition. The purchase of No 11 Chestnut Crescent does not detract from this finding as it was purchased in July 1985. His principal private company, Rimaco, was put into receivership in October 1987, his credit cards have been cancelled and he has not been able to pay his income tax. On the other hand, the respondent is well-off. In addition to 60% of the lump sum of $150,000 received by her, she owns property at Grange Heights and Holland Road. She still drives a Mercedes Benz and has also retained $80,000 from the sale of a BMW which she had been using earlier. As for the daughter, the evidence is overwhelming that she has been totally extravagant in her style of living. In the premises, I am of the view that cl 2 of the agreement should be suspended with effect from June 1987 except for cl 2(d) which is to be varied by reducing the maintenance therein to $500 pm. There will be an order in terms. Each party will pay his or her own costs of this application. There shall be liberty to apply.

Order accordingly.

Solicitors: *KY Choy & Co; Lee & Lee.*

Reported by *Terence Tan Bian Chye*

Private Investment Company For Asia (PICA) SA v Lorrain Esme Osman

Elders Finance Asia Ltd v Lorrain Esme Osman

HIGH COURT (SINGAPORE) – SUIT NO 1212 OF 1983
CHUA J
10 APRIL 1989

Contract – Loan contract – Illegality – Whether moneylending transaction – Whether loan illegal as lenders not licensed – Whether lenders carrying on moneylending in Singapore – Whether lenders residing in Singapore

Negotiable Instruments – Promissory notes – Whether note given for an illegal loan

Words and Phrases – 'Belief' – 'Determination'

The defendant made a promissory note ('the note') in favour of PICA, the original plaintiffs. The note was made pursuant to an antecedent loan incurred by the defendant. The loan was given as a result of a one-month bridging finance on the request of the defendant pending finalization of his financing arrangements. Following the failure of the defendant to pay the principal and interest in accordance with the demand of the original plaintiffs, the present action was started. The defendant claimed that the original plaintiffs were engaged in the business of moneylending and thus required a licence under the Moneylenders Act. It was alleged that documents produced by the original plaintiffs, such as their annual report and their articles of incorporation and by-laws, showed that they announced and held themselves out as carrying on the business of moneylending. The original plaintiffs could have granted an offshore loan, but chose to do it through their Singapore subsidiary and Singapore law would apply.

Held, giving judgment for the original plaintiffs:

(1) The Moneylenders Act was intended to apply only to those persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of business or by way of friendship.

(2) Loan transactions which are undertaken genuinely for the purposes of preserving, advancing or otherwise assisting a party's business, though not necessarily undertaken in connection with its primary objects, were made for the purpose of that business within s 2 of the Moneylenders Act and was within the exception from the definition of 'moneylender'.

(3) In the present case, the original plaintiffs are a foreign company whose principal business, as can be seen from its articles of incorporation and by-laws, is that of making and facilitating capital investments in companies located in Asia and the Far East and to carry out this business the company has power to lend money. The lending of money was clearly not its primary business.

(4) The defendant was a participant in a joint venture project, and as he did not have sufficient funds, he requested the original plaintiffs for a temporary bridging loan. The facts therefore show that the original plaintiffs were not 'moneylenders' within the meaning of the Act.

(5) The original plaintiffs were a Panamanian company with a branch office in Singapore. The defendant is Malaysian.

The loan was funded from New York, deposited in a Hong Kong account for the purchase of shares in a company incorporated in the Cayman Islands. The loan was secured by property in Malaysia. It is therefore clear that the loans were offshore loans and the original plaintiffs did not carry on the business of moneylending in Singapore nor were they residing in Singapore within s 5(1) of the Act.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 117/88.]

Cases referred to

1 *Litchfield* v *Dreyfus* [1906] 1 KB 584 (folld)
2 *Official Assignee of the Property of Koh Hor Khoon & Ors, Bankrupts* v *Ek Liong Hin Ltd* [1960] 1 All ER 440 (folld)
3 *Frank H Wright (Constructions) Ltd & Ors* v *Frodoor Ltd & Anor* [1967] 1 All ER 433 (folld)

Legislation referred to

Moneylenders Act (Cap 188, 1985 Ed) ss 2(c), 5(1)
Moneylenders Act 1900 (UK) s 6(1)

Engelin Teh with *Loy Wee Loon* for the plaintiffs.
Sia Moon Joon for the defendant.

Cur Adv Vult

Chua J: On 16 November 1982, the defendant, Lorrain Esme Osman, made a promissory note for US $1,296,317.56 in favour of Private Investment Company for Asia (PICA) SA ('original plaintiffs'). The promissory note was made pursuant to antecedent debts incurred. On 26 January 1983, the original plaintiffs made a demand in writing to the defendant for payment of the principal sum together with interest in terms of the promissory note. No payment being forthcoming, the original plaintiffs brought the present action against the defendant claiming the principal sum and interest totalling US$1,327,257.96. The fact that the defendant took a loan of US$1.2m and that he signed the promissory note covering the loan and interest are not in dispute. The main issue for the court to decide was whether the original plaintiffs were carrying on the business of moneylending in Singapore and are thus required to have a licence under s 5 of the Moneylenders Act (Cap 188) ('the Act').

The original plaintiffs have adduced evidence which showed that the loan was given as a one-month bridging finance on the request of the defendant pending finalization of his financing arrangements. The promissory note matured but the defendant was unable to pay and requested for several extensions. The final extension having expired and the defendant having failed to pay on the promissory note, the original plaintiffs commenced action.

Section 5(1) of the Act provides:

> 5(1) Every moneylender residing or carrying on the business of moneylending in Singapore whether as principal or as agent shall take out a licence annually.

'Moneylender' is defined in s 2 of the Act to include 'every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money.' But it does not by s 2(c) include 'any person bona fide carrying on ... any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money'.

It was submitted by the defendant that the business of the original plaintiffs was that of moneylending. Counsel for the defendant referred to the original plaintiffs' annual report 1981 (AB63) and to the original plaintiffs' articles of incorporation and by-laws (AB1) and submitted that from these two documents the original plaintiffs had announced themselves and held themselves out as carrying on the business of moneylending. They give 'short, medium and long-term loans' (AB64) and said 'the principal activity of the company and its subsidiaries is primarily to provide financial assistance for the establishment of new enterprises and the expansion and diversification of existing companies' (AB85). The original plaintiff company 'has its principal purpose the making and facilitating of capital investments in enterprises located in such countries in Asia and the Far East as the board of directors shall from time to time determine' (AB2).

Counsel for the defendant said that the original plaintiffs made such a short-term loan to the defendant within their portfolios at the request of the defendant. The original plaintiffs could, counsel said, have granted an offshore loan, but chose to do it through their Singapore subsidiary and Singapore law would apply. Counsel for the defendant submitted that the original plaintiffs were clearly carrying on business in Singapore the evidence of which could be found in the original plaintiffs' annual report 1981 (AB63, at AB64) where it was stated 'PICA's operations are focused on Asia. Our home office is in Singapore'.

In *Litchfield* v *Dreyfus*[1] Farwell J in holding that the plaintiff was not carrying on the business of moneylending said, at p 590:

> The Act was intended to apply only to persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of another business or to a few old friends by way of friendship. This particular Act was supposed to be required to save the foolish from the extortion of a certain class of the community who are called moneylenders as an offensive term. Moneylending is a perfectly respectable form of business. Nobody says that bankers are rascals because they lend money. It is part of their everyday business. Bill-broking is well known in the City of London, and is a respectable business so long as it is carried on in a respectable manner. But the Legislature in casting its net has cast it very wide;

> and if a man is carrying on the business of a moneylender he is within the Act, although he may be free from all blame morally. The question in each case is, does he carry on the business of a moneylender? That depends on the facts of the case.

The definition of 'moneylender' and the exception in s 2(c) of the Act is in pari materia with s 6(d) of the Moneylenders Act 1900 in England.

In the Privy Council case of *Official Assignee* v *Ek Liong Hin Ltd*,[2] the respondents were rubber merchants who lent money to their customers. It was held that the loan transactions which were undertaken genuinely for the purposes of preserving, advancing or otherwise assisting the respondent company's business of rubber merchants and shippers, though not necessarily undertaken in connection with its primary objects, were made 'for the purposes' of that business within s 2 of the Moneylenders Ordinance and was within the exception from the definition of 'moneylender'.

It was also held in *Frank H Wright Constructions (Ltd) & Ors* v *Frodoor Ltd & Anor*[3] that although loans made by the issuing house were moneylending transactions, they were made bona fide for the purpose of the business of an issuing house, which was a business not having for its primary object the lending of money but in the course of which money was lent and thus the loans were brought within the exception provided by s 6(1)(d) of the Moneylenders Act 1900 and were not void under that Act.

In the present case, the original plaintiffs are a foreign company whose principal business, as can be seen from its articles of incorporation and by-laws, is that of making and facilitating capital investments in companies located in Asia and the Far East and to carry out this business the company also has powers to lend money. The lending of money is clearly not its primary business. The transaction which led to the issue of the promissory note sued upon was a joint venture project whereby a company was formed in the Cayman Islands for the purpose of purchasing a drillship. Later the defendant was to take up 30% of the equity. The original plaintiffs were the financial advisers on the joint venture project.

It was in the course of and for the purpose of this joint venture project that the defendant, as he did not have sufficient funds, requested the original plaintiffs for a temporary bridging loan to purchase a 30% equity in the company, set up in the joint venture project, which the original plaintiffs agreed.

The facts of the present case and the law, in my view, put the original plaintiffs clearly within the exception. I found that the original plaintiffs were not a 'moneylender' within the meaning of the Act.

The original plaintiffs are a Panamanian company with a branch office in Singapore. The defendant is a Malaysian. The loan was funded from New York deposited in a Hong Kong account for the purchase of shares in a company incorporated in the Cayman Islands. The loan was secured by property in Malaysia. It is clear that the loans given by the original plaintiffs did not carry on the business of moneylending in Singapore nor were they 'residing' in Singapore with s 5(1) of the Act.

For these reasons I gave judgment for the original plaintiffs for the amount as claimed together with further interest as provided in the promissory note and costs to be taxed.

Order accordingly.

Solicitors: *Shook Lin & Bok*; *Chor Pee & Co.*

Reported by *Terence Tan Bian Chye*